(3)

No. 04-1358

In The
Supreme Court of the United States

Donald E. White, *et vir*

and

Austa M. White, *et vir*

Petitioners,

v.

Steven A. Tscherter, Dana Uhlenhopp,
Cordell Q. Peterson, James Schneider, Carol Petersen,
Respondents in their individual capacities and
IN REM: LINCOLN SAVINGS BANK, and
LINCOLN BANCORP, a holding company, its parent,

Respondents.

Petitioners' Reply To Respondents' Brief In Opposition: For A Petition, In The Nature Of A *Respectful* Demand, For A Common-Law Writ Of Certiorari To The United States Court Of Appeals For The Eighth Circuit

DONALD E. WHITE, *et vir*
Repatriated Sovereign,
pursuant to
8 USC § 1481(a)(6)
Petitioner
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In Care of 75 Davis Circle
Bella Vista,
Republic state of Arkansas,
Postal Zone [72714-5611]
(479) 855-8767

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PETITIONERS' REPLY TO RESPONDENTS' BRIEF IN OPPOSITION

It is the responsibility of Petitioners to define the questions for review, as set out in USSC Rule 14.1(a), and only those questions set out in the petition, or fairly concluded therein, are to be considered by the Court. Respondents' Counsel has set out his own question, which can only be included as meritorious if Petitioners' sovereignty is denied and the underlying statute at 8 U.S.C. § 1481(a)(6) is declared unconstitutional, making Petitioners, as 14th Amendment citizens, subject to statutory considerations in submission to government.

Respondents' Counsel continues the same pattern of assumptive and presumptive tactical assertions as he used in the inferior courts. He does so, still without any contravening evidence to support his position. He continues to feign ignorance of Petitioners' direct statements through manipulative language that does not conform to the rules of statutory court procedure or evidence. There is absolutely no need for his use of terms such as "apparently", "appeared to be based on", "believe", "are not sure", or "dispute", in lieu of *deny* or *object* because there are no hidden or secret meanings, intentions or motivations in Petitioners' pleadings. Petitioners took great pains to break down the multiple claims of a complex legal position into single thought paragraphs of direct, concise and precise meaning, specifically pursuant to ***Federal Rules of Civil Procedure***, Rule 8(e)(1) *and* (2). Although the sovereignty issues of this case did not become an issue until ignored by officers of the inferior courts, Petitioners think, and still believe, that their original complaint was sufficient to prevail on the debt issues, if required to stand alone on its merits.

On page 2, at II. Clarification of the Record, Respondents' Counsel "takes exception", rather than denies, pursuant to *Federal Rules of Civil Procedure*, Rule 8(d), when he attempts to "correct" the record. His alleged corrections are without foundation in fact and he again presents no contravening evidence to support his "corrections", to wit, at:

1. Relevant to the "unsealed" and "unfiled" orders, the dockets of the inferior courts reflecting that information were included by Petitioners with their request to Justice Thomas for the Rule 22 extension and in the Appendices of the petition. For Counsel's edification, for an order to be "unsealed" was to mean that it was not officially imprinted or stamped with the seal of the court. To be "unfiled" was to mean that it was held out from October 24 until a later date, December 13, 2004 when it was untimely filed – however, the effect of its existence continued to precipitate subsequent action in spite of its unofficial nature and character, this among other instances, requiring this Court's supervisory authority;

2. Relevant to the absence of a "license to practice law", the underlying false assumption of Respondents' Counsel herein is that Petitioners and Vedder are *pro se* and subject to the statutory code. The absence of a "license" to practice law from any fraternal collegial bar association is applicable only to 14th Amendment citizens and does ***NOT*** make unlawful their joint and co-equal participation in a sovereign common law contract. His defense of this issue in brief shall be most interesting to Petitioners;

3. Relevant to the concurrent actions in multiple courts, herein, Counsel, (and not Respondents), states that he is "not sure" what is meant by Petitioners' assertion on page 5 that the 8th Circuit Court of Appeals (decision) was "driving events in four separate inferior courts". Petitioners would remind Counsel that it was his own premature filing of the foreclosure action in BREMER COUNTY, IOWA, without settlement of the underlying debt issue, and his 12(b)(3) defense arguments that necessitated multiple venue litigation. Counsel understood his own process sufficiently to request payment for himself and an Arkansas colleague, R. Jeffrey Reynerson, of their services in attorney fees in the amount of $23,416.89, from BREMER COUNTY Judge John Mackey, for (1) the BREMER COUNTY, IOWA DISTRICT COURT, the foreclosure action which stole Petitioners' 352 acre Iowa farm, (2) the federal US District Court for Western Arkansas, where the original complaint relating to the ultra vires conduct of Respondents was dismissed for an alleged lack of proper venue, (3) the federal US District Court for Northern Iowa, where it was subsequently filed and (4) the US Court of Appeals for the 8th Circuit where the interlocutory order, now before this Court, was appealed.

4. Principals Tscherter and Uhlenhopp, of LINCOLN SAVINGS BANK and Tscherter, Peterson, Schneider and Petersen of LINCOLN BANCORP, INC., are sued in their private individual capacities as well as their public corporate entities, as clearly identified in the case headings of this matter. Counsel

"disputes" for the sake of his attorney fee generation but clearly fails to deny that these individuals and their public entities, as well as the corporate institutions they represent, are his clients;

5. Relevant to the "mis-naming" of the US Bankruptcy Court, the insignificance and lack of substance of Counsel's "defense" is represented in his "dispute" of the mis-naming as a clearly defined issue. The US Bankruptcy Court for Western Arkansas clearly is in the Eighth Circuit. Mrs. White's voluntary dismissal from that pseudo-"protection" paved the way for the Whites to take control of the Plaintiff position when they filed their initial *ultra vires* complaint the following day in the US DISTRICT COURT for WESTERN ARKANSAS. This was a strategic move totally unanticipated by Respondents against which they had no factual evidence to defend;

6. Respondents' Counsel continues to "dispute", without denying the facts that four separate courts have issued orders and directives contrary to the *Federal Rules of Civil Procedure, Federal Rules of Appellate Procedure* and *Federal Rules of Evidence*. Other than the perjured affidavits of Respondents, which will be dealt with in Counsel's "dispute" #8, Respondents bring no contravening evidence or testimony to support the sole testimony of their Counsel throughout. The testimony of Counsel, either in brief or in argument, is insufficient to sustain a Federal Rule of Civil Procedure, Rule 12(b)(6) motion which reduces to a Rule 56 Summary Judgment – in the absence of controversy.

This has been an extremely contentious matter at every level of engagement. Review of the venue statute indicated to Petitioners that an appeal out of the US DISTRICT COURT for WESTERN ARKANSAS would have been highly survivable, as is the current appellate action. Petitioners chose for their own reasons, related to the timing of the expatriation delivery of documents two weeks ***following*** the initiation of the original complaint in Arkansas, to accept that verdict and expand the suit. In that manner, their sovereignty could and would not be called into legitimate question.

The appellate rules were violated in the US DISTRICT COURT for NORTHERN IOWA on multiple occasions when orders continued to flow within Petitioners' appellate period, when Petitioners refused to proceed ***pro se*** as a contingency for hearing their justicable controversy and as the judge therein refused to recuse herself, as officers of the court, (both judge and attorneys), raced on to an ultimate conclusion of dismissal and usurpation of the judicial process. The US COURT OF APPEALS sent the sovereign paperwork of the BREMER COUNTY, IOWA foreclosure appeal back to the wrong court in Fort Smith, Arkansas, where the case ***had never been situated***, only to have it returned to Petitioners with an untimely notice of appeal of the ***WRONG ORDER out of WESTERN ARKANSAS of July 14, 2004***, contrary to the ***BREMER COUNTY, IOWA*** paperwork in hand! When Petitioners vociferously protested, with a sovereign solution that would have straightened out this

judicial mess – that was not of their own making, Respondents opposed, only to have the judge of the WESTERN ARKANSAS DISTRICT COURT refund the BREMER COUNTY, IOWA appellate filing fee, the consideration, to judicially pigeonhole and bury the foreclosure appeal in the record of the US DISTRICT COURT for WESTERN ARKANSAS, as the grand theft of the BREMER COUNTY, IOWA foreclosure rolled on to conclusion.

Of course, Respondents, through Counsel, would "assert that any and all actions taken by any court in connection with Petitioners' dispute with Respondents have been lawful and appropriate", only because they have been unilaterally successful in having the decisions ruled in their favor, ***oblivious of the sovereignty issues*** and absence of Petitioners' 14th Amendment trustee status;

7. Respondents' Counsel "disputes", but fails to deny, that there was anything collateral or contingent about the foreclosure proceeding initiated in the IOWA STATE DISTRICT COURT. Does he truly fail to understand the collateral nature of the promissory note and Deed of Trust as having been executed on the same date, the later securing the former, the same upon which he moved to dispossess Petitioners of their private *de jure* property? He further disregards the unrebutted judicial fact in evidence that, if the promissory notes are or were found to be fraudulent and void *ab initio*, upon which the Deeds of Trust are dependent, *that is to say, contingent*, so too are the Deeds of Trust themselves fraudulent and void *ab initio*. Given

that Petitioners' claims have never had an impartial hearing or review of any sort, the legitimacy, lawfulness and legality of the foreclosure action itself ***has to be called into question*** by Respondents' failure to validate and verify in answer the legitimacy of the underlying debt, pursuant to 15 U.S.C. § 1692g. The foreclosure action was initiated against Petitioners, as Defendants, on April 1, 2004, prior to Respondents' filing of their Opposition to Petitioners' Motion For Summary Judgment.

8. All of the affidavits, nearly identical in substance and wording as submitted to the USDC for Western Arkansas, have clearly been prepared by Respondents' Counsel and were designed to specifically refute the specific allegations contained in petitioners' original complaint. These affidavits, two out of three of which are "SUBSCRIBED AND SWORN TO by (the affiant, Dana Uhlenhopp) before me on this 12th day of April, 2004", are signed by Respondents' Counsel as NOTARY PUBLIC, where an identical document containing the first nine caveats and signature are signed by Steve Tscherter before another notary. Other than the written statements of the affiants, however, no hard core evidence, such as production of the original note, by copy or otherwise, or the T-accounting demanded by Petitioners in the first and second administrative processes, which are presumed to be in the possession of Respondents, ***have ever been produced to support*** the written statements of Respondents' affidavits.

> In the USDC for Northern Iowa, Counsel has constructed the affidavits for Respondents such that each swears to his own action, or lack thereof, as well as the same for his Co-respondents. Counsel should know that this is in clear violation of *Federal Rules of Evidence*, Rule 602, which thus invalidates the value of the affidavits as admissible testimony. Affiants can attest to only their OWN actions, or lack thereof, and are without personal knowledge as to the activities of their co-respondents.
>
> The perjured aspects of these affidavits will become apparent ***when*** Respondents produce the original promissory note and T-accounting of all funds deposited and dispersed from the account bearing Petitioners' names, starting with a zero balance on April 1, 2002.

CONCLUSION

Petitioners have constructed their petition in strict conformance to USSC Rule 10 and, contrary to Respondents' Counsels' allegations, have articulated multiple grounds for hearing this matter. The petition now represents one third of a cross-circuit appeal, involving constitutional questions of sovereignty and contract infringement and covers now both civil and criminal applications. The sovereignty issues alone, which Respondents' Counsel and the inferior courts themselves have ignored, are sufficient to warrant the Supreme tribunal's review.

Nothing pertinent to the debt can be utilized as precedent in any other case as the absence of verification

and validation thereof and the *ultra vires* conduct of Respondents, as principals, is germane ***solely*** to this case. The systematic deviation from acceptable judicial behavior, contrary to settled case law, does, in fact, warrant the supervisory authority of the **United States Supreme Court**.

Respectfully submitted,
With all rights reserved,
We remain,

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